

**Remarks**

Applicants wish to point out that Form PTO-948 (Notice of Draftsperson's Patent Drawing Review) appears to incorrectly indicate that the requirements for view labeling is covered by 37 C.F.R. §1.84(h). In fact, 37 C.F.R. §1.84(h) is directed to appearance of views, while 37 C.F.R. §1.84(u) is directed to view labeling.

Applicants wish to point out the status of the above application. The application is a National Stage of PCT/US01/16550 (published as WO 02/096199), the application published in the United States as US20030104943, examination is complete, a Notice of Allowance was mailed on February 9, 2005, and the issue fee was paid on May 6, 2005.

Applicants wish to make the Office aware of an apparent disconnect between the Office of Patents Publication, the Examining Division and the Rules regarding drawing acceptance. In particular, it appears to be improper to issue a request for corrected drawings after drawing review in the Office of Initial Patent Examination (OIPE) or acceptance by the International Bureau. The corrected drawings are therefore being voluntarily submitted.

Under MPEP §507, "OIPE inspects the drawings to see if they can be effectively scanned and adequately reproduced....Under the OIPE review process, OPIE may object to and require corrected drawings...." Under 37 C.F.R. §1.85(a), "A utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected...." Thus, the rules do not appear to allow for drawing objections after OIPE review and release for examination. However, 37 C.F.R. §1.85(c) appears to allow objections to be filed up to the point of allowance. In particular, "[i]f a corrected drawing is required or if a drawing does not comply with §1.84 **at the time the application is allowed** (emphasis added), the Office may notify the applicant...." Applicants note, however, that the instant application was at the post-allowance stage at the time the instant objection was mailed, thus the instant Request appears to be untimely.

PCT Rule 11 is directed to National Stage application drawings (see MPEP §1893.03(f)). In particular, "the drawing provided by the International Bureau should be acceptable. The

USPTO cannot impose requirements beyond those imposed by the [PCT]." Thus, it appears that the USPTO cannot properly object to drawings accepted by the International Bureau.


Applicants' undersigned attorney notes that during a post-allowance review of the instant application, it was determined that the Examiner Clardy did not indicate on any Form PTOL-326 (Office Action Summary) or Form PTOL-37 (Notice of Allowability) whether the drawings were accepted or objected to. In view of that lapse and the above described Rules, on 6 May 2005, the undersigned left voice mail messages with Examiner Clardy and his supervisor, Gary Kunz, in an attempt to clarify the status of the drawings. On 9 May 2005, both Examiner Clardy and Mr. Kunz informed the undersigned that, according to Office practice, the drawings are presumed to be accepted if the OIPE does not issue an objection prior to release to the Examining Division. The Examining Division's understanding and application of the Rules and Office practice therefore conflicts with that of the Office of Patents Publication, Publishing Division.

### **Conclusion**

In view of the foregoing, applicants respectfully request that the objection to the drawings be withdrawn in light of the correction.

Applicants do not believe that a fee is due in connection with this response. If, however, the Commissioner determines that a fee is due, he is authorized to charge Deposit Account No. 19-1345.

Respectfully submitted,

  
James D. Harper, Reg. No. 51,781  
SENNIGER POWERS  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
(314) 231-5400